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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/845,741 | 05/01/2001 | Samuel T. Henderson | ACC.01 | 3451 |
| 25871 | 7590 | 05/06/2004 | EXAMINER | |
| SWANSON & BRATSCHUN L.L.C. 1745 SHEA CENTER DRIVE SUITE 330 HIGHLANDS RANCH, CO 80129 | | | SHARAREH, SHAHNAM J | |
| | | ART UNIT | PAPER NUMBER | |
| | | 1617 | | |
| DATE MAILED: 05/06/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/845,741 | HENDERSON, SAMUEL T. |
| Examiner | Art Unit | |
| Shahnam Sharareh | 1617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/20/03 / 3/8/04 , 3/22/04
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Amendment filed on January 20, 2004 has been entered. Claim 11 is pending. any rejection that is not addressed in this Office Action is considered obviated in view of the Arguments and the claim Amendments.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn US Patent 4,528,197.

Applicant's arguments with respect to this rejection have been fully considered but are not found persuasive. Applicant argues that claim 11 is directed to method of treating dementia of Alzheimer's type, or other loss of cognitive function caused by reduced neuronal metabolism and Blackburn does not teach such limitation.

In response to applicant's argument Examiner states that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In claim drawn to a process, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

The instant claim does not require a manipulatively different step from those taught in Blackburn. Rather, Applicant's argued limitation is a function provided by the

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method steps already disclosed by Blackburn. There is no method step in the instant claim that require the patient be suffering from Alzheimer's type, or other loss of cognitive function caused by reduced neuronal metabolism. Applicant's attention is drawn to the recitation of the step (a) wherein the claim encompass A or Any patient having a diet that the carbohydrate intake is not restricted. Thus, methodology of Blackburn inherently meets the limitations of the instant claim.

Claim Rejections - 35 USC § 103

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidl et al in view of JP Patent 06-287138.

Schmidl is used to show a normal nutritional compositions comprising carbohydrate and a lipid component comprising medium chain fatty acid triglycerides (MCT) or long chain fatty acids that can be metabolized to MCTs. Schmidl does not refer to the use of his composition for treatment of Alzheimer related loss of cognitive function.

JP publication provides that MCT can be used to treat or prevent Alzheimer disease and all symptoms thereof.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of invention to use Schmidl for treating Alzheimer type loss of cognitive function, because Schmidl composition contains MCT or MCT prodrug, and as taught by JP publication, MCT improves or treats Alzheimer symptoms. Thus, the ordinary skill in the art would have expected that Schmidl composition would also be useful for improving Alzheimer related loss of functional group.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on October 09, 2003 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

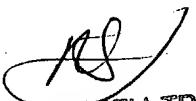
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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RUSSELL TRAVERS
PRIMARY EXAMINER